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6 IN THE UNITED STATES DISTRICT COURT

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FOR THE NORTHERN DISTRICT OF CALIFORNIA

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NICHOLAS ANTHONY SALCIDO,

No. C 05-4884 WHA (PR)

Petitioner,

**DENIAL OF CERTIFICATE OF
APPEALABILITY**

vs.

D. L. RUNNELS, Warden,

Respondent..

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This is a habeas case under 28 U.S.C. § 2254 filed pro se by a state prisoner. The petition was denied in an order entered on October 3, 2007. Judgment was entered that day. Petitioner has filed a request for a certificate of appealability ("COA"), which also will be treated as a notice of appeal. *See Tinsley v. Borg*, 895 F.2d 520, 523 (9th Cir. 1990) (treating timely pro se motion for a certificate of probable cause as a timely notice of appeal).

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A petitioner may not appeal a final order in a federal habeas corpus proceeding without first obtaining a certificate of appealability (formerly known as a certificate of probable cause to appeal). *See* 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A judge shall grant a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The certificate must indicate which issues satisfy this standard. *See id.* § 2253(c)(3). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: the petitioner must demonstrate that reasonable jurists would find the district court's assessment of the

1 constitutional claims debatable or wrong.” *Slack v. McDaniel*, 120 S.Ct. 1595, 1604 (2000).

2 This was not a close case. The request for a COA (document number 21 on the docket)
3 is **DENIED** for the reasons set out in the order denying the petition.

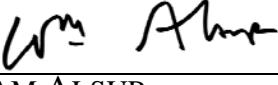
4 The clerk shall transmit the file, including a copy of this order, to the Court of Appeals.

5 See Fed. R.App.P. 22(b); *United States v. Asrar*, 116 F.3d 1268, 1270 (9th Cir. 1997).

6 Petitioner may then ask the Court of Appeals to issue the certificate, *see* R.App.P. 22(b)(1), or if
7 he does not, the notice of appeal will be construed as such a request, *see* R.App.P. 22(b)(2).

8 **IT IS SO ORDERED.**

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10 Dated: November 14, 2007.


WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE